

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

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| In the matter of the proposed) | NOTICE OF PROPOSED |
| adoption of New Rules I through) | ADOPTION |
| III pertaining to implementation) | |
| of detention officer transfer to) | NO PUBLIC HEARING |
| sheriffs' retirement system) | CONTEMPLATED |

TO: All Concerned Persons

1. On September 9, 2005, the Montana Public Employees' Retirement Board proposes to adopt New Rules I through III for members of the Public Employees' and Sheriffs' Retirement Systems pertaining to implementation of detention officer transfer to sheriffs' retirement system.

Pursuant to MAR Notice No. 2-2-354, the Board previously proposed adoption of similar rules at page 725 of the 2005 Montana Administrative Register, issue no. 9. Those proposed rules were withdrawn by Notice of Decision at page 1021 of the 2005 Montana Administrative Register, issue no. 12. Thereafter, proposed New Rules I through III were developed and negotiated with the Sheriffs and Peace Officers Association ("SPOA").

2. The Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Public Employees' Retirement Board no later than 5:00 p.m. on August 15, 2005, to advise us of the nature of the accommodation that you need. Please contact Carolyn Miller, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; telephone (406) 444-7939; TDD (406) 444-1421; FAX (406) 444-5428; e-mail cmiller@mt.gov.

3. The rules proposed to be adopted provide as follows:

Rule I DETENTION OFFICER MEMBERSHIP IN SHERIFFS' RETIREMENT SYSTEM (SRS) (1) An active PERS member on July 1, 2005 is eligible to become a member of the SRS, and an employee hired by a sheriff after July 1, 2005 must become a member of the SRS, pursuant to Title 19, chapter 7, part 3, MCA, if the member or employee meets the definition of "detention officer" in 19-7-101(2), MCA, which includes:

(a) being employed in a detention center, a juvenile detention center, a temporary detention center, or a detention facility;

(b) having authority and responsibility for maintaining custody of an inmate for any period of time and performing tasks related to the operation of a detention center; and

(c) completing, within the time allowed by ARM 23.14.526, a detention officers' basic course as provided by the Montana

law enforcement academy or equivalent training in a training school meeting the minimum standards of the board of crime control, as required by ARM 23.14.526, pursuant to 44-4-301, MCA.

(2) An employee hired by a sheriff after July 1, 2005 who meets all the criteria to be a "detention officer", except completion of training, must be an SRS member from the first day of employment or, if later, the first day all criteria except completion of training are met.

(3) An SRS member who does not complete timely the training specified in (1)(c) will be considered to be a member of PERS after the time allowed by ARM 23.14.526 until training is completed. All contributions and the member's membership service and service credit will be adjusted as necessary. Otherwise, an employee who becomes a member of the SRS remains a member of the SRS until the member is no longer employed by the sheriff in a detention center.

AUTH: 19-2-403, MCA

IMP: 19-7-101, 19-7-301, 19-7-302, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed rule is necessary to properly define the term "detention officer" recognizing Title 44, MCA, SB 370, and the Board of Crime Control's rules concerning detention officer training and certification.

Proposed rule I(1) incorporates the statutory language defining a "detention officer" in Section 19-7-101, MCA, and the requirements that must be satisfied to be eligible for membership in the Sheriffs' Retirement System.

Proposed rule I(2) is required to clarify how and when detention officers hired after the effective date of SB 370 (July 1, 2005) will be eligible for enrollment in the Sheriffs' Retirement System.

Proposed rule I(3) assists the Board in determining which employees of sheriff's offices are in fact detention officers by requiring that detention officers eligible for Sheriffs' Retirement System membership meet the mandatory training requirements established by the Montana Department of Justice under ARM 23.14.526. The proposed rule then assists in clarifying the disposition of those detention officers for whom training is expected, but who do not receive the mandatory training requirements within the amount of time established by the Montana Department of Justice under ARM 23.14.526.

Rule II DETENTION OFFICER ELECTION TO TRANSFER TO SHERIFFS' RETIREMENT SYSTEM (SRS) (1) An active PERS member who, on July 1, 2005, meets all the criteria to be a "detention officer" may make an election to become a member of SRS.

(2) To be an effective election, the written election form prescribed by the board, containing all the required information

and including all necessary documentation, must be properly signed and must be filed with the board between July 1, 2005 and April 30, 2006, inclusive.

(3) A written election received by the board by the 15th day of a calendar month will be effective the first pay period of the following calendar month. A written election received by the board after the 15th day of a calendar month will be effective the first pay period of the second following calendar month.

(4) A detention officer who becomes a member of the SRS has not terminated from service and is not eligible to receive any benefit from PERS until termination of employment.

AUTH: 19-2-403, MCA

IMP: 19-7-101, 19-7-301, 19-7-302, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed rule is necessary to clarify the election procedure, particularly the time administratively necessary between notification of the Montana Public Employee Retirement Administration and the effective date, for purposes of reporting by the local sheriff's office. The rule also clarifies the effect of the election, in conformance with federal law requirements known informally as "the same desk rule" (as applied here, an employee who continues in employment but changes retirement systems has not terminated service for purposes of eligibility).

Rule III DETENTION CENTER REPORTS FROM SHERIFFS (1) On the 15th day of July each year, the sheriff of each county with a detention center must file an employer report with the board.

(2) The employer report will include information necessary for the board to determine the appropriate retirement system for detention officers, as of June 30 of each year, including:

(a) each detention officer's name, social security number, retirement system and date of initial employment in current position;

(b) whether the employee is employed in a detention center, is acting as a detention officer, and has completed a detention officers' basic course or equivalent training at a training school meeting the minimum standards of the board of crime control or is expected to receive such training within the time allowed by ARM 23.14.526.

(3) After the initial sheriffs' employer report, on or before the first working day of the fiscal year, the board will provide each sheriff a form containing the information from the immediately preceding report, on which the sheriff only need provide new information or corrections for filing with the board.

(4) Payment of the detention center payroll contributions will be considered delinquent pursuant to 19-2-506, MCA, until both the required contributions and valid employer reports are received by the board.

AUTH: 19-2-403, MCA

IMP: 19-7-101, 19-7-301, 19-7-302, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed rule is necessary in order for the Board to obtain needed information from each sheriff's department with a detention center. The required report will provide the information on each detention officer necessary for the Board in classifying the detention officers who are eligible for membership in the Sheriffs' Retirement System.

4. Concerned persons may present their data, views, or arguments concerning the proposed rules in writing to Mike O'Connor, Executive Director, Public Employees' Retirement Board, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; FAX (406) 444-5428; e-mail moconnor@mt.gov and must be received no later than 5:00 p.m., August 25, 2005.

5. If persons who are directly affected by the proposed amendment and adoption wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to the Public Employees' Retirement Board, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; FAX (406) 444-5428; e-mail moconnor@mt.gov and must be received no later than 5:00 p.m., August 25, 2005.

6. If the board receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 45 persons based on approximately 450 detention officers.

7. The Public Employees' Retirement Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding public retirement rulemaking actions. Such written request may be mailed or delivered to Carolyn Miller, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; faxed to the office at (406) 444-5428; or e-mailed to cmiller@mt.gov, or may be made by completing a request form at any rules hearing held by the Public Employees' Retirement Board.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

/s/ Carole Carey
Carole Carey, President
Public Employees' Retirement Board

/s/ Dal Smilie
Dal Smilie, Chief Legal Counsel and
Rule Reviewer

Certified to the Secretary of State on July 18, 2005.